

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NADER SHATERIAN, ) Case No. C-11-920 SC  
Plaintiff, )  
v. ) ORDER DENYING PLAINTIFF'S  
WELLS FARGO BANK, NATIONAL ) MOTION FOR PRELIMINARY  
ASSOCIATION; CAL-WESTERN )  
RECONVEYANCE CORPORATION; and DOES )  
1-50, inclusive, )  
Defendants. )  

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I. **INTRODUCTION**

This lawsuit involves a mortgage loan Plaintiff Nader Shaterian ("Plaintiff") took out to refinance his Mill Valley, California home, and the subsequent attempts at foreclosure made by Defendants Wells Fargo Bank, National Association ("Wells Fargo") and Cal-Western Reconveyance Corporation ("Cal-Western") when Plaintiff stopped making mortgage payments. Before the Court is a fully briefed motion by Plaintiff for a preliminary injunction barring the June 17, 2011 scheduled foreclosure sale of his residence.<sup>1</sup> ECF No. 20 ("Mot"), 28 ("Opp'n"), 37 ("Reply"). For the following reasons, the Court DENIES Plaintiff's Motion.

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<sup>1</sup> At the time Plaintiff filed his Motion, this sale was set for May 20, 2011. See Mot. The parties subsequently stipulated to continue the sale to June 17, 2011 so the Court could rule on Plaintiff's Motion. ECF No. 47.

1       **II. BACKGROUND**

2           In 2003, Plaintiff purchased a home located at 511 Browning  
3 Court, Mill Valley, California 94941-3716. ECF No. 1 ("Notice of  
4 Removal") Ex. A ("Compl.") ¶¶ 1, 9. In August 2007, Plaintiff  
5 sought refinancing of his home "to take advantage of lowering  
6 interest rates and to be able to withdraw a portion of the equity  
7 in his home to be able to finish needed improvements to his home."  
8 Id. ¶ 10. Plaintiff alleges that he spent roughly \$300,000 to  
9 build two retaining walls to prevent his home from sliding down the  
10 hill on which it was built. Id.

11          Plaintiff alleges that he contacted Diablo Funding Group, Inc.  
12 ("Diablo")<sup>2</sup> and Diablo qualified Plaintiff for a new mortgage loan  
13 for the property. Id. ¶¶ 4, 12. On August 27, 2007, Plaintiff  
14 signed the Deed of Trust, and it was recorded on September 13,  
15 2007. ECF No. 11 ("Def.'s RJD") Ex. 6 ("Deed of Trust").<sup>3</sup>  
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17          <sup>2</sup> Diablo is not clearly identified in Plaintiff's Complaint or the  
18 papers filed before the Court. Plaintiff alleges that Diablo is a  
19 California corporation "acting as the agent of World [Savings  
Bank]," Compl. ¶ 5, but the facts pleaded suggest Diablo was a  
mortgage broker.

20          <sup>3</sup> Wells Fargo asks the Court to take judicial notice of a number of  
21 documents. ECF No. 11 ("Def.'s RJD"). Exhibits 1-5 are government  
22 documents Wells Fargo relies on to establish that Wells Fargo is  
the successor in interest to World Savings Bank. Exhibit 6 is the  
23 Deed of Trust. Exhibit 7 is the Adjustable Rate Mortgage Note  
("ARM Note") dated August 27, 2007 and signed by Plaintiff.  
Exhibit 8 is the declaration of Plaintiff that was filed in state  
court before removal. Exhibit 9 is the Notice of Default and  
24 Election to Sell Under Deed of Trust ("Notice of Default") dated  
October 6, 2010 and recorded on October 7, 2010. Under Rule 201 of  
25 the Federal Rules of Evidence, a court may take judicial notice of  
facts generally known within the territorial jurisdiction of the  
trial court or capable of accurate and ready determination by  
resort to sources whose accuracy cannot reasonably be questioned.  
26 A court may also take judicial notice of a document if the  
plaintiff's claim depends on the contents of the document, and the  
27 parties do not dispute the authenticity of the document. Knievel  
v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005). However, the Court

Under the Deed of Trust, Plaintiff received a \$985,000 loan from World Savings Bank ("World") secured by his property. Id. Plaintiff describes the loan as a "Pick-A-Payment" loan, and argues that the loan was "intentionally designed to result in negative amortization and obligations to pay compound interest." Id. ¶ 16. Plaintiff claims he was unaware of the loan's terms at the time he agreed to the loan due to "fraudulent non-disclosure" of their terms. Id. ¶ 13. Specifically, Plaintiff alleges that he was given blank loan documents and told that "the reason for this was that negotiations were still underway with World" and that an employee of Diablo would complete them. Id. ¶ 37. Plaintiff also alleges that the disclosures he did receive were misleading. Id. ¶ 15.

Around October 2009, Plaintiff lost his job and stopped paying his monthly mortgage payments. Reply at 1. Around this time, Wells Fargo became World's successor in interest. Compl. ¶ 44; RJN Exs. 1-6. Plaintiff sought modification of his loan, which Wells Fargo ultimately denied. Compl. ¶ 16. On October 7, 2010, Cal-Western recorded a Notice of Default. Compl. ¶ 48; see Notice of Default. Cal-Western is identified in the Notice of Default as "either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary" under the Deed of Trust. Id. at 2.<sup>4</sup> Filed with the Notice of Default is a declaration of Sandra Garza ("Garza"), identified as a vice-

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may not take judicial notice of the truth of the facts recited within a judicially noticed document. Lee v. City of Los Angeles, 250 F.3d 668, 688-90 (9th Cir. 2001). The Court GRANTS Wells Fargo's RJN, but limits its review of the exhibits accordingly.

<sup>4</sup> As the Court discusses infra, Plaintiff hotly disputes this identification of Cal-Western.

1 president of Wells Fargo, in which she both authorizes "the  
2 trustee, foreclosure agent, and/or their authorized agent" to sign  
3 the Notice of Default on behalf of Wells Fargo and declares that  
4 Wells Fargo contacted Plaintiff as required by California Civil  
5 Code § 2923.5. Id. at 3.

6 The Notice of Default stated that as of October 6, 2010,  
7 Plaintiff had accrued \$60,175.64 in arrears. It stated that  
8 Plaintiff had the legal right to stop the sale of the property by  
9 bringing his account in good standing prior to the sale, and noted  
10 that no sale date could be set until three months after the  
11 recording of the Notice of Default. Id. On January 12, 2011, more  
12 than three months later, Cal-Western recorded a Notice of Trustee's  
13 Sale, setting the sale date of the property for February 1, 2011.  
14 Mot. at 5.

15 On, January 31, 2011 -- the day before the scheduled sale --  
16 Plaintiff commenced this action in the Superior Court of  
17 California, County of Marin. See Compl. Plaintiff brought eleven  
18 causes of action against Defendants Wells Fargo and Cal-Western:  
19 (1) fraud and deceit; (2) unconscionability; (3) breach of the  
20 covenant of good faith and fair dealing; (4) violation of Civil  
21 Code § 1916.7; (5) violation of Civil Code §§ 1920 and 1921; (6)  
22 violations of the Federal Truth-in-Lending Act ("TILA"); (7) breach  
23 of fiduciary duty; (8) unfair business practices; (9) rescission;  
24 (10) injunctive relief; and (11) declaratory relief. See id.  
25 Some of these causes of action arise from the initial loan  
26 agreement; others involve the subsequent foreclosure process and  
27 Wells Fargo's refusal to offer Plaintiff a loan modification.

28 Plaintiff also filed an ex parte application for a temporary

1 restraining order barring the sale, which the state court granted,  
2 continuing the foreclosure sale to April 11, 2011. Mot. at 5-6. A  
3 preliminary injunction hearing was set for April 1, 2011 to  
4 determine if the foreclosure sale should be continued until the end  
5 of the proceedings. Id. at 6.

6 Defendants removed the case to federal court on February 28,  
7 2011. See Notice of Removal. Defendants agreed to two additional  
8 continuances of the foreclosure sale; it is currently scheduled for  
9 June 17, 2011. ECF No. 47.

10 Now Plaintiff seeks a preliminary injunction enjoining the  
11 trustee sale until the termination of this action. Plaintiff has  
12 also filed a Motion to Remand, which is fully briefed. ECF Nos. 14  
13 ("MTR"), 30 ("MTR Opp'n"), 35 ("MTR Reply").<sup>5</sup> Wells Fargo filed  
14 separate motions to dismiss Plaintiff's Complaint and strike  
15 portions of Plaintiff's Complaint; both motions are fully briefed.  
16 ECF No. 9 ("MTD"), 33 ("MTD Opp'n"), 39 ("MTD Reply"); 10 ("MTS"),  
17 32 ("MTS Opp'n"), 41 ("MTS Reply").<sup>6</sup>

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20 <sup>5</sup> Plaintiff concedes in his MTR that this Court has federal  
21 question subject matter jurisdiction over this action due to his  
22 federal claims. MTR at 8. He argues that the parties are non-  
23 diverse, and thus the case should be remanded to state court for  
24 lack of subject matter jurisdiction if the federal causes of action  
25 are dismissed. Id. Accordingly, neither party challenges the  
26 Court's authority to rule on the instant Motion.

27 <sup>6</sup> In its Motion and supporting documents, Plaintiff makes numerous  
28 references to other pending litigation concerning Wells Fargo and  
"Pick-A-Payment" loans, and asks the Court to take judicial notice  
of numerous documents. ECF No. 19 ("Pl.'s RJD"). The Court GRANTS  
Plaintiff's unopposed RJD, but does not take judicial notice of the  
facts recited within the proffered documents. Specifically, it  
DENIES Plaintiff's request that the Court take judicial notice of  
the fact that "Pick-A-Payment" loans "caused harm to borrowers like  
Plaintiff."

1     **III. LEGAL STANDARD**

2              Federal Rule of Civil Procedure 65 permits the issuance of a  
3 preliminary injunction to preserve the positions of the parties  
4 until a full trial can be conducted. LGS Architects, Inc. v.  
5 Concordia Homes, 434 F.3d 1150, 1158 (9th Cir. 2006). To warrant  
6 injunctive relief, a plaintiff "must establish that he is likely to  
7 succeed on the merits, that he is likely to suffer irreparable harm  
8 in the absence of preliminary relief, that the balance of equities  
9 tips in his favor, and that an injunction is in the public  
10 interest." Winter v. Natural Res. Def. Council, 129 S. Ct. 365,  
11 374 (2008). Within the Ninth Circuit, these elements "are  
12 balanced, so that a stronger showing of one element may offset a  
13 weaker showing of another." Alliance for the Wild Rockies v.  
14 Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, where the  
15 Plaintiff's proof of likelihood of success is limited to raising  
16 "serious questions going to the merits," but the balance of  
17 hardships tips sharply in Plaintiff's favor, a preliminary  
18 injunction may be appropriate. Id.

19

20     **IV. DISCUSSION**

21         **A. Preliminary Matters**

22              Plaintiff cites to two concurrent actions in his Motion, and  
23 argues that both are relevant to his Motion.

24              First, Plaintiff devotes considerable space to the assurance  
25 between California's Office of Attorney General and Wells Fargo,  
26 which requires Wells Fargo to offer individuals who purchased  
27 "Pick-A-Payment" loans the opportunity to take part in a loan  
28 modification structure. See Mot. at 2; Pl.'s RJD Ex. 1 and 2.

1 Under the agreement, Wells Fargo is obligated to offer eligible  
2 borrowers loan modifications "presented in a 'waterfall' such that  
3 if a borrower is determined not to be eligible for a modification  
4 listed in the agreement, the borrower will then be considered for  
5 the next modification on the list of possible modifications." Mot.  
6 at 4. Borrowers who do not qualify for any of the steps of the  
7 waterfall and borrowers whose homes have already been sold at  
8 foreclosure sales may receive cash payments. Id. Plaintiff states  
9 that he "should qualify for a modification" under this assurance,  
10 and asks the Court to enjoin the foreclosure sale so he can proceed  
11 through this process. But Plaintiff provides no support for his  
12 bald assertion that he "should qualify" under this scheme.  
13 Furthermore, this argument in favor of preliminary injunction is  
14 completely untethered to the merits of his action. As such, the  
15 Court finds this assurance to be of little relevance to this  
16 action.

17 Second, Plaintiff refers to a related class action, In Re  
18 Wachovia Corp., No. 09-2105 (N.D. Cal.). Plaintiff states that he  
19 has opted out of the settlement "because it does not protect people  
20 like Plaintiff who have a threatened sale" and "it only gives them  
21 possibly some minimal compensation after the fact" and because of  
22 the requirement that he release all claims against Wells Fargo.  
Mot. at 3. But he qualifies this by stating that "the  
administrator of the settlement may be contesting his opt-out,"  
without explaining this statement or providing a citation. Id. at  
4. Plaintiff argues that the existence of this class action  
settlement supports his motion for injunctive relief. Id.  
Plaintiff could not be more wrong. If Plaintiff opted out of the

1 Settlement, then he has made the conscious decision to forego its  
2 benefits. If Plaintiff has not opted out, then he has released all  
3 claims and has no standing to bring this action. Plaintiff cannot  
4 have it both ways -- In Re Wachovia has no bearing on this case.

5       **B. Likelihood of Success on the Merits**

6 Plaintiff has the burden of establishing that he is likely to  
7 succeed on the merits of his case. Winter, 129 S. Ct. at 374.  
8 Plaintiff makes two arguments relating to the merits in his Motion:  
9 he argues that Defendants failed to comply with California Civil  
10 Code § 2923.5 ("section 2923.5"), and contends that this renders  
11 the Notice of Default invalid. Mot. at 8. He also argues that  
12 Cal-Western lacked authority to issue the Notice of Default under  
13 California Civil Code § 2924(a)(1) ("section 2924(a)(1)"). Id. at  
14 9.<sup>7</sup>

15 Plaintiff also briefly argues that his Complaint "contains  
16 numerous additional facts and causes of action that satisfy the  
17 requirement that he has raised serious questions going to the  
18 merits." Mot. at 10. Plaintiff offers no argument that these  
19 other causes of action satisfy the requirements for a preliminary  
20 injunction; rather, he asks the Court and Defendants to infer these  
21 arguments from his Complaint. This is improper: a plaintiff may  
22 not support a motion for a preliminary injunction by merely  
23 pointing to his complaint and the facts alleged therein. As such,  
24 the Court will not consider the other causes of action here.

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26       <sup>7</sup> Plaintiff does not bring a cause of action for violation of  
27 §2923.5 in his Complaint, and it is unclear which causes of action  
28 are predicated on this alleged statutory violation. Section 2924  
is only mentioned in Plaintiff's claim for fraud and intentional  
deceit. See Compl. ¶ 60.

1        1. Section 2923.5

2        California's Civil Code provides a framework for non-judicial  
3 foreclosure: the lender must first record a notice of default; once  
4 three months have elapsed, the lender must give notice of the  
5 planned foreclosure sale. Cal. Civ. Code § 2924.

6        Section 2923.5 concerns the notice of default. It requires  
7 the "mortgagee, trustee, beneficiary, or authorized agent" seeking  
8 to file a notice of default to first contact the borrower in person  
9 or by telephone "in order to assess the borrower's financial  
10 situation and explore options for the borrower to avoid  
11 foreclosure." Cal. Civ. Code § 2923.5(a)(2). The notice of  
12 default may not be filed until thirty days after this initial  
13 contact or the statute's due diligence requirements are satisfied.  
14 Id. § 2923.5(a)(1). During this initial contact, the party seeking  
15 to file a notice of default must advise the borrower that he or she  
16 has the right to request a subsequent meeting and, if requested,  
17 schedule the meeting within fourteen days. Id. § 2923.5(a)(2).

18        The California Court of Appeal has narrowly interpreted  
19 section 2923.5 "as to avoid having the state law invalidated by  
20 federal preemption." Mabry v. Super. Ct., 185 Cal. App. 4th 208,  
21 231 (Ct. App. 2010).<sup>8</sup> The rights provided to borrowers under §  
22 2923.5 are purely procedural -- there is no "right" to a loan  
23

24        <sup>8</sup> Wells Fargo argues that § 2923.5 is preempted by the Federal Home  
25 Owners Loan Act ("HOLA"). Opp'n at 5. The Ninth Circuit has not  
26 ruled on this issue, and district courts within the Ninth Circuit  
are split on the issue. See Loder v. World Savings Bank, No. 11-  
0053, 2011 WL 1884733, at \*3 (discussing preemption and collecting  
cases). While preemption is a question of federal law, the  
interpretation of a state statute is within the purview of the  
court of that state. Accordingly, this Court applies Mabry's  
narrow application of § 2923.5 and finds this application not  
preempted by federal law.

1 modification. Id. The lender's obligations under § 2923.5 to  
2 "assess" the borrower's financial situation and "explore" options  
3 to avoid foreclosure can be satisfied by simply asking the borrower  
4 "why can't you make your payments?" and "telling the borrower the  
5 traditional ways that foreclosure can be avoided (e.g., deeds 'in  
6 lieu,' workouts, or short sales)." Id. at 232. The statute does  
7 not place a duty on the lender "to become a loan counselor itself."  
8 Id. at 219.

9 In the declaration filed with the Notice of Default, Wells  
10 Fargo vice president Garza declares that Wells Fargo contacted  
11 Plaintiff as required by § 2923.5. Notice of Default at 3. Wells  
12 Fargo submits as evidence of this the "Consolidated Notes Log" for  
13 the loan, which it claims shows a Wells Fargo representative called  
14 Plaintiff to discuss loan modification on December 14, 2009, and  
15 on March 3, 2010, Plaintiff's authorized loan modification agent  
16 contacted Wells Fargo to discuss loan modification. Dolan Decl.  
17 Ex. D ("Consol. Notes Log").<sup>9</sup>

18 Plaintiff declares that this is "absolutely untrue," and  
19 states that his first contact with Wells Fargo was in June 2010,  
20 when he contacted them to inquire into loan modification.  
21 Shaterian Decl. ¶ 21. The Court finds that while there may be a  
22 dispute as to whether these disclosures took place, Plaintiff is  
23 unlikely to succeed on the merits given the evidence produced by  
24 Wells Fargo.

25 The remedy available under § 2923.5 is the postponement of a  
26 foreclosure sale. Mabry, 185 Cal. App. 4th at 213. Wells Fargo

27  
28 <sup>9</sup> Michael Dolan ("Dolan"), employee of Wells Fargo and former  
employee of World, filed a declaration in opposition to Plaintiff's  
Motion. ECF No. 29.

1 additionally argues that even if it had failed to comply with §  
2 2923.5, it would not justify enjoining the sale, because the  
3 statutory violation itself, not the pending foreclosure, must be  
4 the cause of the injury. Opp'n at 8. Essentially, Wells Fargo  
5 argues that Plaintiff was aware of the alternatives to foreclosure  
6 given that he made multiple attempts to modify his loan, and hence  
7 the Plaintiff's lack of money, not his lack of knowledge, led to  
8 the foreclosure.

9 Because it is unclear which causes of action are predicated on  
10 Wells Fargo's alleged statutory violation, it is unclear whether  
11 Plaintiff must prove an injury. Nevertheless, the Court finds  
12 merit in Wells Fargo's argument. If Plaintiff had alleged that he  
13 was unaware of the alternatives to foreclosure or he had disputed  
14 the fact that he was in default on his mortgage, then a claim for  
15 relief under § 2923.5 would be stronger. But Plaintiff knew he had  
16 not paid his mortgage payments since October 2009, and he had made  
17 multiple attempts to modify his loan. California law ensures that  
18 borrowers have at least three months between filing of the notice  
19 of default and the foreclosure sale so they can attempt to avoid  
20 foreclosure. Cal. Civ. Code. § 2924(a)(2). More than seven months  
21 have passed since the filing of the Notice of Default. As such,  
22 Plaintiff has arguably already received the benefits of § 2923.5.

23 For these reasons, the Court finds that Plaintiff is unlikely  
24 to succeed on the merits of a cause of action premised on a  
25 violation of § 2923.5.

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1                   2. Section 2924(a)(1)

2                   Section 2923(a)(1) also concerns the notice of default. It  
3 requires "the trustee, mortgagee, or beneficiary, or any of their  
4 authorized agents shall first file for or record, in the office of  
5 the recorder of each county wherein the mortgaged or trust property  
6 or some part or parcel thereof is situated, a notice of default."  
7 Cal. Civ. Code § 2924(a)(1).

8                   The Notice of Default was recorded by Cal-Western. Plaintiff  
9 argues that this Notice of Default is void because Cal-Western was  
10 not substituted as trustee until December 7, 2010. Mot. at 9.  
11 Plaintiff also argues that Cal-Western has not established that it  
12 was acting as the agent for the trustee or the beneficiary. Id.

13                  In response, Wells Fargo argues that Cal-Western served as  
14 Wells Fargo's authorized agent in recording the Notice of Default.  
15 Opp'n at 9. Wells Fargo points to the Garza Declaration, filed  
16 with the Notice of Default, in which the Wells Fargo vice president  
17 "authorizes the trustee, foreclosure agent and/or their authorized  
18 agent to sign, on behalf of the beneficiary/authorized agent, the  
19 Notice of Default." See Garza Decl. Wells Fargo also argues that  
20 Plaintiff misconstrues the burden of proof, asserting that on a  
21 motion for preliminary injunction, Plaintiff has the burden of  
22 establishing no agency relationship exists. Opp'n at 9-10.

23                  The Court agrees with Wells Fargo: Plaintiff, not Wells Fargo,  
24 has the burden. To establish a § 2924(a)(1) violation at trial,  
25 Plaintiff would have to prove by a preponderance of the evidence  
26 that Cal-Western was not Wells Fargo's authorized agent at the time  
27 it filed the Notice of Default. Plaintiff's sole evidence in  
28 support of this argument is the fact that Cal-Western was later

1 substituted as trustee. This evidence does not tend to prove Cal-  
2 Western was not Wells Fargo's agent at the time the Notice of  
3 Default was filed. Furthermore, to the extent that Plaintiff  
4 claims that the alleged statutory violation provides the basis for  
5 his fraud cause of action, Plaintiff has failed to allege a related  
6 injury caused by this violation.

7 The Court finds Plaintiff is unlikely to succeed on the merits  
8 of an action premised on a violation of § 2924(a)(1).

9 **C. Irreparable Harm**

10 Because a preliminary injunction is an "extraordinary remedy  
11 that may only be awarded upon a clear showing that the plaintiff is  
12 entitled to such relief," Plaintiff must show that he is likely to  
13 suffer irreparable injury in the absence of an injunction. Winter,  
14 129 S. Ct. at 375-76. Winter overruled the previous test used by  
15 the Ninth Circuit and other circuits which required a showing  
16 irreparable injury was possible, rather than likely. See Johnson  
17 v. Couturier, 572 F.3d 1067, 1081 (9th Cir. 2009).

18 Plaintiff argues that if the sale is not enjoined, his house  
19 will be sold, and cites Sundance Land Corp. v. Cmtv. First Fed.  
20 Sav. & Loan Ass'n, 840 F.2d 653, 661-62 (9th Cir. 1988), for the  
21 legal proposition that "foreclosure on real property constitutes  
22 irreparable harm." Mot. at 7. Wells Fargo disagrees, citing  
23 Alcaraz v. Wachovia Mortgage FSB, 592 F. Supp. 2d 1296, 1304, 1306  
24 (E.D. Cal. 2009), another foreclosure case in which the court found  
25 that because the plaintiff could not afford the house, the  
26 threatened sale did not constitute irreparable harm.

27 The Court agrees with Wells Fargo. While the loss of a home  
28 is a serious injury, Plaintiff's injury is undercut by the fact

1 that he has not paid a mortgage payment in eighteen months, is more  
2 than \$60,000 in arrears, and does not allege a loss of equity in  
3 the property. As such, the Court finds that Plaintiff has failed  
4 to establish irreparable harm is likely.

5       **D. Balance of Equities**

6 Plaintiff argues that the balance of equities favors  
7 Plaintiff, stating: "If the preliminary injunction is denied,  
8 Plaintiff will lose his home to foreclosure. If the preliminary  
9 injunction is granted, Defendant will have to delay the foreclosure  
10 until the conclusion of this case." Mot. at 12. Wells Fargo  
11 counters that Plaintiff has always known the consequences of  
12 default, and argues that by postponing the sale, "Wells Fargo would  
13 be forced to continue to hold a depreciating security interest,  
14 without any ability to stop or slow its ongoing losses." Opp'n at  
15 12. Wells Fargo also argues that Plaintiff delayed in seeking  
16 injunctive relief, having filed his Complaint the day before the  
17 foreclosure sale was initially scheduled. Id. at 12-13. Wells  
18 Fargo argues that foreclosure is "inevitable and just" given the  
19 fact that Plaintiff "has now been in default for approximately 18  
20 months." Id. at 12.

21       The Court agrees with Wells Fargo. Plaintiff claims that he  
22 stopped paying mortgage payments when he lost his job. Reply at 1.  
23 He claims that he rebuilt his income "to a point where he was able  
24 to report to the lender that he made significant income each  
25 month." Id. at 3. Yet despite this reversal of fortune, he has  
26 made no good faith attempt to bring his account into good standing.  
27 He commenced this action at the eleventh hour. These facts do not  
28 tip the equities in his favor.

1           **E. Public Interest**

2       Neither party makes a compelling argument that the Court's  
3       ruling on Plaintiff's Motion will affect the public interest.

4  
5           **V. CONCLUSION**

6       For the foregoing reasons, the Court DENIES Plaintiff Nader  
7       Shaterian's motion for a preliminary injunction restraining the  
8       trustee's sale of the property. The June 17, 2011 foreclosure sale  
9       of the house located at 511 Browning Court, Mill Valley, California  
10      shall proceed as scheduled.

11       Wells Fargo's Motion to Dismiss and Motion to Strike and  
12      Plaintiff's Motion to Remand are still before the Court. Because  
13      this Order and the foreclosure sale may moot portions of these  
14      motions, the parties are ordered to meet and confer to discuss how  
15      the sale, this Order, and other developments in the case affect the  
16      pending motions. The parties shall file a joint statement with the  
17      Court clearly identifying: which causes of action Plaintiff still  
18      intends to assert against Defendants; which causes of action, if  
19      any, that Plaintiff agrees to strike from his Complaint; and which  
20      arguments in the pending motions are now moot. This statement  
21      shall be filed no later than fourteen (14) days from the date of  
22      this Order. Failure to comply with this Order shall be deemed  
23      sufficient grounds for sanctions.

24  
25       IT IS SO ORDERED.

26  
27       Dated: June 10, 2011

28  
  
UNITED STATES DISTRICT JUDGE